



January 27, 2000

Mr. Jeffrey L. Schrader  
Assistant Criminal District Attorney-Civil Section  
Bexar County Justice Center  
300 Dolorosa, Fifth Floor  
San Antonio, Texas 78205-3030

OR2000-0301

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131678.

The Bexar County Fire Marshall (the "county") received a request for all evidence obtained from a fire scene relating to case number 99-146. You have provided for our review information that is responsive to the request, marked as exhibits "B" and "C". You advise that you believe exhibit "B" is required to be disclosed. You assert that exhibit "C" is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The county received the requestor's written request for information on October 20, 1999. You did not request a decision from this office until November 18, 1999, more than ten business days after the requestor's written request. Therefore, we conclude that the county failed to meet its ten-day deadline for requesting a decision from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law

makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). We do not believe that you have demonstrated a compelling reason under section 552.108 to overcome the presumption of openness and, therefore, we will not address your arguments under section 552.108. Thus, you may not withhold the responsive information from the requestor under section 552.108. However, we will address your arguments under section 552.101 as the applicability of section 552.101 may provide a compelling reason to overcome the presumption of openness.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You argue that the information at issue is made confidential by Local Government Code §§ 352.011 *et seq.* Subchapter B of chapter 352 pertains to the powers and duties of county fire marshals. The subchapter provides that the county fire marshal shall investigate the cause, origin, and circumstances of fires that destroy property within the marshal’s jurisdiction. Local Gov’t Code § 352.013. In certain cases, such as where arson is suspected, the county fire marshal may determine that further investigation is necessary, and in such cases, is granted subpoena powers and the authority to administer oaths and gather and preserve evidence. Local Gov’t Code § 352.015. You specifically refer to section 352.017 for the proposition that the information at issue is made confidential. Section 352.017, in relevant part, provides:

- (a) In a proceeding under this subchapter, the county fire marshal may:
  - (1) conduct an investigation or examination in private;
  - (2) exclude a person who is not under examination; and
  - (3) separate witnesses from each other until each witness is examined.

You essentially argue, relying on *Ex parte Pruitt*, 551 S. W.2d 706 (Tex. 1977), that this provision makes the information in Exhibit “C” confidential. In *Pruitt*, the Texas Supreme Court interpreted the statutory predecessor to subchapter B of Chapter 352 of the Local Government Code. The court held that the legislature’s intent was “to allow public access to [certain basic information, but not] to allow access to *active* investigatory records of the county fire marshal.” 551 S.W.2d at 710 (emphasis added). The court further concluded that the purpose of the statute was to preclude interference with the county fire marshal’s law enforcement duties. *Id.* Unlike the situation in *Pruitt*, the information at issue reflects that

the case is closed and inactive. Hence, we do not agree that the information at issue must be withheld under section 552.101 of the Government Code in conjunction with subchapter B of Chapter 352 of the Local Government Code and *Pruitt*. See also Open Records Decision No. 465 (1987) (statutory confidentiality provision must be express; confidentiality requirement will not be implied from the statutory structure). We therefore conclude that except for the categories of information discussed below, the requested information must be released in its entirety.

Exhibit "C" contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Exhibit "C" also contains driver's license numbers. Access to such information is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

We have marked information which you must withhold pursuant to section 552.130. Except as otherwise noted herein, we determine that you must release the information in Exhibit "C."

You state that the county has not provided for our review "the film containing photographs taken in connection with the investigation because such film is still undeveloped and

maintained in an evidence locker at the Bexar County Fire Marshal's Office. As a matter of practice, such film is developed only if the photographs are required in connection with a particular case." By this representation, we conclude the film is information in the possession of the county that is responsive to the requests. Further, information on film meets the definition of information implicated under the Act. *See* Gov't Code § 552.002. You raise no exception in the Act to the required public disclosure of this information. If a governmental body wishes to withhold particular information, it must establish that a particular exception applies to the information. Gov't Code § 552.301. If a governmental body does not establish how and why an exception applies to the requested information, the attorney general has no basis on which to pronounce it protected. *See* Open Records Decision No. 363 (1983). You also have not provided this information for our review or otherwise complied with the requirements of the Act for the withholding of this information. Gov't Code § 552.301. This information is therefore presumed public. Gov't Code § 552.302. This legal presumption may be overcome only by a demonstration of a compelling interest. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). A demonstration that the requested information is deemed confidential by law is a compelling interest sufficient to negate this presumption. *See* Open Records Decision No. 150 (1977). Because you have presented no compelling reason to withhold the film, we conclude you must release this information.

Finally, you advise the county has not provided for our review "any of the tangible physical evidence requested by the insurance company, which was collected in connection with the investigation and referenced in the investigative information and report, because [the county believes] such items are outside the scope of [the Act]." This office has ruled that tangible physical items are not the type of information contemplated under the Act. *See, e.g.*, Open Records Decision No. 581 (1990). Thus, we agree that the tangible physical evidence collected as part of the marshal's investigation of the fire is not public information as that term is defined in section 552.002 of the Government Code. We, therefore, determine that the tangible physical evidence is not information made public by section 552.021 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM/jc

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Encl. Submitted documents

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(w/o enclosures)